

Town of Milford
Zoning Board of Adjustment Minutes
Sept 1, 2011
Case # 14-11
Charles Hall
Special Exception

Present: Kevin Johnson, Chairman
Laura Horning
Fletch Seagroves
Steve Winder
Zach Tripp - Alternate

Absent: Steve Bonczar
Michael Unsworth - Alternate

Secretary: Peg Ouellette

Case #14-11 - The applicant, Charles Hall, along with Hillmont Properties LLC, owner of Map 12, Lot 13-1, 770 Elm St, in the Commercial district, is requesting a special exception from Article II, Section 2.03.1:C to alter an existing non-conforming structure by constructing an addition, nine (9) +/- feet from the front property line.

MINUTES OF CASE #14-11 WERE APPROVED ON OCTOBER 6, 2011.

Motion to Approve: F. Seagroves

Seconded: S. Winder

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. K. Johnson read the notice of hearing into the record, as well as the list of abutters. Charles Hall of HD Enterprises, Inc. was present. Hillmont Properties and 776 Elm Street, LLC were represented.

Charles Hall presented his case: He stated they want to renovate and expand an existing building to change use into a bar and restaurant. They seek to put in a three-season porch on the left-hand corner of the building (as you face the building) which would be approximately 20' x 20'. He stated it will more than likely be a little smaller than that but decided to go larger and downsize from there. Having a three-season porch outside the building will require access into the side of the building. They do have double doors on one side with an 8 ft stockade fence. There are two large maple trees in the front of the building that will fairly well cover the visual aspect of the building. Balcom Brothers Rental is on the other side of the building. The proposed porch will be unobtrusive and will not visually change the structural shape or footprint of the building. He stated the biggest problem is that the deck will be within nine ft from where the State ROW is, so they came in to go through the ZBA process.

K. Johnson stated it appears from both the plot plan and applicant's submitted drawing that the proposed new addition, as it fronts along Rt. 101, will be in line with the existing building. He asked if that is the case.

C. Hall responded that is correct.

K. Johnson asked if that is the boundary to which an exception is being sought.

C. Hall responded it is.

K. Johnson asked if that existing building is already at the approximate, plus or minus, from the right of way which extends beyond the surface of the roadway.

C. Hall responded yes.

L. Horning questioned the 19 ft call out-on the plan between this building and Dunkin Donuts. Are people driving back and forth along this? Is there enough for two vehicles to pass back and forth? Is it obstructing anything?

C. Hall stated that the 19 ft boundary area is a greenway. It has two fences; actually a fence and a half after Hurricane Irene. There is no way to get around the back of the building. He pointed out that they have handicapped ramps and to the right of the ramp is also a patio area of crushed stone and pea gravel. If you go around that right side of the building from the back to the proposed three-season deck area, there is a fence, brush and shrubbery, and pea stone gravel.

K. Johnson, pointing to the plan, showed the line where the fence exists and the section of fence that has since been blown down.

C. Hall stated that is correct, the fence line that goes parallel to that side of the building is the 8 ft stockade fence between Dunkin Donuts and the property. At the back corner of the building there was another 8 ft stockade fence which came down and there is a picket fence at the back side of the proposed deck that will have to be relocated.

K. Johnson asked if the existing chimney and fence are on that side of the building, those will need to be addressed. He noted on the application that this is being taken care of.

Applicant stated yes.

K. Johnson opened the hearing for public comment; there were no comments or questions and the public portion of the meeting was closed. He then stated a letter received from John Hill giving Charles Hill permission to represent his interest in this case.

Kevin Johnson asked the applicant to go through the criteria for a special exception.

Description of proposed use: Renovate and expand existing building for a restaurant/bar. Build a bar and install coolers and sinks. Build a three season deck, 20x20 SF to building and install exterior door to allow access to the deck.

1. The proposed use shall be similar to those permitted in the district:

As evidenced by the numerous local businesses in the immediate area with assorted decks and landings that are used for various purposes, we also will run along the same lines.

2. The specific site is an appropriate location for the proposed use because:

It is unobtrusive to virtually all other businesses in the area because it is screened from the road by trees and from abutters by stockade fencing.

3. The use as developed will not adversely affect the adjacent area because:

It is blocked from view and access by stockade fence. Separated from other abutters by the building itself.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

It is not accessible to any vehicular traffic and is not in the path of any pedestrian foot traffic.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

As an outside addition with associated deck there is no other appropriate facilities involved. All access to the area will be controlled by on site management.

K. Johnson said there will be no direct access at the side of the building from the screened porch?

C. Hall responded that is correct.

K. Johnson asked if there were any additional questions from the Board; there were none.

K. Johnson read from the Town of Milford Zoning Ordinance; Article II, Section 2.03.1:C Non-conforming Use and Structure: Alterations: Alteration, expansion or change of a non-conforming use or structure shall only be permitted by Special Exception by the Zoning Board of Adjustment if it finds that: 1.The proposed alteration, expansion or change will not change the nature of the original use; and 2. The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood. (1999)

K. Johnson also read from the Town of Milford Zoning Ordinance, Article V, Section 5.05.1 Acceptable Uses, in Commercial District: Acceptable Uses C 1 Restaurants. And Section 5.05.5 Acceptable Uses and Yard Requirements by Special Exception: A. Each structure shall be set back at least thirty (30) feet from the front lot line.

K. Johnson indicated that the special exception is covered in Section 5.05.2A:3 Reduced front, side and rear setbacks, and also in Section 2.03.1:C, Non Conforming Use and Structure, so the Board does have the ability to consider the special exception.

2.03.1:C: 1. The proposed alteration, expansion or change will not change the nature of the original use; and 2. The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood. (1999)

F. Seagroves said that he sees no change to the existing structure. There is no expansion because it is not going out toward the road and he doesn't see any problem. He also doesn't see that it will have any drastic effect to the neighborhood because a lot of the other buildings are the same way.

L. Horning agreed that the expansion will not change the nature of the use. As F. Seagroves said, it is going along the same line and not going out towards Rte 101. She does not see any substantial change to the neighborhood; it is a business area and it is a proposed business use.

Z. Tripp agreed and said that there would be no effect on the neighborhood.

S. Winder agreed that it is an acceptable use and doesn't see any issues.

K. Johnson agreed, commenting that while this appears to have originally been a residential structure, it is within the commercial zone. The adjacent businesses are clearly commercial and are developed as commercial type buildings. There is no need to maintain a residential look to this business since the property has been used for commercial uses. So, therefore, the nature of the

original commercial use would not be altered by the three-season porch nor would it make any substantial effect on the neighborhood. It is a whole series of very commercial properties and it is making this commercial property more commercial. He feels the alterations requirement for non-conforming use has been met and in this particular case it does not make this property more non-conforming.

Section 10.02.1:A The proposed use shall be similar to those permitted in the district.

S. Winder said it is similar to other businesses in the area. Under B, the specific site is allowed in the zoning. On C, there is no adverse impact on adjacent areas. He said as it is separated from other areas with a fence, there is no nuisance or hazard to pedestrians.

L. Horning agreed. The proposed use is permitted in the district. As the Chair stated, there is no need to maintain residential continuity in that area; they are all businesses. It is use permitted and similar to those in the district.

Z. Tripp stated the proposed location for the three-season porch is the best location. It is out of the way of traffic going in and out of the facility. It is blocked off from the neighbors. It is the most appropriate place.

F. Seagroves said the proposed use is similar in the district. Just up the street there is a restaurant that has a porch like a three-season porch. It is appropriate because there are others in the area. He does not see any adverse effect to the area because it is all commercial. As far as nuisance to vehicles or pedestrians there are not many people walking up in that area. There are a lot of cars, but he doesn't see any problem.

K. Johnson agreed with the rest of the Board that the use is similar to those permitted; that the specific site as provided on the plans is an appropriate one; it maintains the line of the existing building; it does not encroach into the setback any further than the existing building does; so it is an appropriate location. The use as developed will not adversely affect the adjacent areas. It won't block the site line of any of the other businesses in the area any more than the existing fences do, so it will not impact them. With the conditions stated, with limiting access off that side of the building, there should be no serious hazard to vehicles. His concern there was that people could go down off it and into traffic. But as the applicant has described the planned development, customer safety has been taken into consideration, so he sees no serious hazard to people. The placement, per the plans, will not obstruct the views so it would not present any traffic hazard. Addressing the appropriate facilities is one that gives the Board very wide latitude in considering the exception. In this case, what the Board would do for this type of facility is defer to the Planning Board. If a safe deck is built, that is the adequate facility. It's a whole package. The Board will assume that the Planning Board will make sure that the deck is an appropriate facility and that the applicant is going to ensure that it is an appropriate facility. K. Johnson feels that adequate facilities will certainly be provided for this use.

K. Johnson said, after reviewing the petition and all the evidence and taking into consideration personal knowledge of the property in question, the Board has determined the following findings of fact:

K. Johnson asked the Board if this is a special exception allowed by the ordinance.

F. Seagroves - yes; L. Horning - yes; Z. Tripp - yes; S. Winder - yes; K. Johnson - yes

K. Johnson asked if the specified conditions are present under which a special exception may be granted. Steve Winder - yes; L. Horning - yes; Z. Tripp - yes; F. Seagroves - yes; K. Johnson - yes

K. Johnson asked if there was a motion to approve the application.

F. Seagroves made the motion to approve Case # 14-11.

Z. Tripp seconded the motion to approve Case #14-11.

Final Vote:

Z. Tripp -yes; S. Winder - yes; L. Horning - yes; F. Seagroves - yes; K. Johnson - yes

Case #14-11 was approved by unanimous vote.

Kevin Johnson reminded the applicant of the 30 day appeal period and that the Planning Board would be contacting the applicant with appropriate paperwork.